Benefit Corporations:
Frequently Asked Questions for Investors

Q. What is a benefit Corporation?

A. A benefit corporation is a traditional for-profit corporation with modified purpose and disclosure rules.

Q. How does a benefit corporation create long-term value?

A. A benefit corporation is a traditional corporation that is committed to higher levels of purpose, accountability and transparency:

Purpose: Benefit corporations commit to creating public benefit and sustainable value in addition to generating profit. This sustainability is an integral part of their value proposition.

Accountability: Benefit corporations are committed to considering the company's impact on society and the environment in order to create long-term sustainable value for all stakeholders.

Transparency: Benefit corporations are required to regularly report to shareholders on how the company is balancing these interests.

Q. Doesn't traditional corporate law allow a board to pursue a corporation's mission?

A. Not if the mission is perceived to conflict with shareholder value. This reality is particularly vivid when a company is sold. In a sale process, traditional corporate law requires the board to accept the highest bid, no matter how that bid affects other stakeholder interests. Moreover, even outside of the sale context, immediate shareholder value is the only metric that directors can ultimately be concerned with.

Q. What other advantages does benefit corporation status provide?

A. **Long-Term Value Creation:** Benefit corporations have protection and permission to make decisions based on the creation of long term value for all stakeholders. The benefit corporation's expanded duty combats short-termism, helping investors hold management accountable to long-term and sustainable value creation.

Positive Brand Association: Becoming a benefit corporation confirms brand association with positive social and environmental impact in the mind of consumers and

This document is not intended to provide legal advice to any specific business. Applicable state statutes may have specific requirements and features, and thus should be consulted for the proposed state of incorporation. Businesses should obtain competent legal and accounting advice before taking any steps to become a benefit corporation.

in the industry more broadly. An increasing number of consumers, over 70 million today, purchase goods based on the morals or the mission of a business and, increasingly, a company's mission is a major factor influencing brand loyalty.

Brand Trust: Benefit corporations provide an innovative model to hold a company accountable to its mission and, by committing to this higher purpose, create customer trust.

Strong Governance and Effective Management: Benefit corporations promote good governance by striving for long-term value creation. CALPers has stated that "strong governance, along with effective management of environmental and human capital factors, increases the likelihood that companies will perform over the long-term and manage risk effectively."

Transparency: Integrated environmental and social reporting is a trend throughout the capital markets and benefit corporations report regularly to their social and environmental impact. Reporting against a third party standard, as required in the model legislation and in most states, can reduce due diligence costs and as well as risk for investors by allowing them to compare performance across companies.

Attraction and Retention of Employees: Benefit corporations attract and retain talent through increased employee engagement and their commitment to a higher purpose. 40% of businesses polled have found that involvement in sustainability was very important to employee retention. Millennials will grow to 75% of the workforce by 2025; 77% of current millenials indicated that their "company's purpose was part of the reason they chose to work there.

Q. What kinds of investors are investing in benefit corporations?

A. Numerous benefit corporations have raised capital from both traditional and social impact funds. Investors in benefit corp include: Andreessen Horowitz, Founders Fund, First Round Capital, Forerunner Ventures, Foundry Group, Baseline Ventures, Benchmark, Sherbrooke, New Enterprise Associates, Brand Foundry, Collaborative Fund, DBL Investors, Emerson Collective, Freshtracks Capital, Generation Equity Investors, Golden Seeds Capital, Good Capital, Greycroft Partners, Harrison Metal, Ironwood Equity Fund, New School Ventures, Omidyar Network, Pacific Community Ventures, Peterson Ventures, and The Westly Group.

Q. How does this model protect the interests of investors?

A. Shareholders retain all the protections that they have in a traditional corporate model. First, they have all their corporate governance rights. They elect the directors and vote on major corporate transactions such as charter amendments or mergers. Conflict transactions will still be subject to a searching entire fairness analysis whenever challenged, so that directors cannot pursue their own interests ahead of the interest of shareholders. Shareholders will retain the ability to bring the same types of lawsuits they can bring against a traditional corporation, including demands to review the

This document is not intended to provide legal advice to any specific business. Applicable state statutes may have specific requirements and features, and thus should be consulted for the proposed state of incorporation. Businesses should obtain competent legal and accounting advice before taking any steps to become a benefit corporation.

company's books and records, election review proceedings to make sure elections are being conducted fairly, and derivative suits to pursue corporate claims against directors for breach of fiduciary duty. The only change under the benefit corporation model is the value proposition: the idea that true long-term value is built by aligning all stakeholder interests, including the interests of shareholders.

Q. ***Is investing in a benefit corporation a viable alternative for an institution that has a duty to its investors, such as its LPs, to maximize value?***

A. Absolutely. First, the commitment to stakeholder interests implicit in benefit corporation status can create value for shareholders that does not exist outside of that status. By making such a commitment, a business may engage its employees, its customers and its business partners in a manner that creates more long-term value for its shareholders. Even if that were not the case, it may well be that any costs associated with a company's mission can simply be viewed as a cost in that entity's business model, and that model may still provide an opportunity to obtain an acceptable return.

It may be helpful to consider a hypothetical: imagine an institution considering an investment in a corporation whose successful execution of its business plan would yield a $100 profit to the investor. Then imagine another investment in a similar entity that, by pledging to contribute 10% of its profits to charitable causes, could yield a profit of $120 for the same investment by engaging its employees and customers through publicizing its charitable commitment. At that point, $120 less the 10% pledge would yield $108 profit, an 8% increase in profitability. While this is obviously simplified, it illustrates that there is no conceptual contradiction between maximizing stockholder value and committing to a mission.

Q. ***This all sounds good, but is there any legal precedent to back it up? Isn't it risky for a business to adopt this form and be at the cutting edge?***

A. All business plans have some risk, but the benefit corporation legislation is structured to *reduce* risk. The precedent that applies to traditional corporations, such as the *eBay* case, validates lawsuits against companies that consider mission. While there is no guarantee that a benefit corporation will not be sued for pursuing its mission, the adoption of the benefit corporation model should decrease that risk. In addition, the benefit corporation model provides protection from lawsuits from the other direction, challenging directors for not pursuing mission, because the statutes are designed to avoid such lawsuits. First, constituencies other than shareholders are not entitled to bring lawsuits; only shareholders may bring lawsuits challenging board decisions. In addition, in order to bring a derivative lawsuit challenging the balancing of the various stakeholder interests, a shareholder must meet a minimum ownership requirement--in Delaware, 2% of the company, or in the case of public companies, $2 million worth of stock. Moreover, stakeholder balancing decisions are specifically protected by the business judgment rule, under which it is very difficult to pursue a lawsuit. Finally, the statutes protect directors from monetary liability in such lawsuits. For mission-aligned companies, the adoption of the benefit corporation model should decrease the chance of lawsuits, since the statutes provide protection from lawsuits where a director's decision takes mission and stakeholder interests into consideration.

This document is not intended to provide legal advice to any specific business. Applicable state statutes may have specific requirements and features, and thus should be consulted for the proposed state of incorporation. Businesses should obtain competent legal and accounting advice before taking any steps to become a benefit corporation.

Q. ***Will the accountability provisions put the directors in a situation where they are required to take actions they might not otherwise take?***

A. The statutes are carefully drafted to require that the board consider or balance the interests of stakeholders. The statute does not mandate any particular outcome. It simply gives the board tools with which to preserve their mission.

Q. ***What about the expense of converting?***

A. In most situations, the expense should be very limited. For a company where all the shareholders support a change, the conversion is simply a matter of obtaining director and shareholder consents to an amendment to the certificate of incorporation, and filing that amendment with the Secretary of State in the jurisdiction where the company is incorporated. In most jurisdictions, no further change is required, not even a change to the corporate name.

Where some of a company's current shareholders object to the change, there may be additional issues, such as satisfying a supermajority vote or providing appraisal rights to shareholders who do not consent to the change. In our experience, however, these issues can usually be managed with minimal expense.

Q. ***Are there legal obstacles to taking a benefit corporation public or for a public corporation to convert to benefit status?***

A. No. In fact, a number of public corporations are incorporated in states that have "other constituencies" statutes already. These statutes specifically provide that directors can consider other stakeholders' interests. Those statutes have been in place for almost 25 years and have not created concerns with respect to IPOs.

Q. ***What about reporting? How does a company know it is meeting its mission?***

A. Benefit corporations are required to assess and report on key impact metrics. In most states, this is an annual report showing the company's performance related to third party standards. In all states, this report is given to shareholders and in most it is posted publicly as well.

.

This document is not intended to provide legal advice to any specific business. Applicable state statutes may have specific requirements and features, and thus should be consulted for the proposed state of incorporation. Businesses should obtain competent legal and accounting advice before taking any steps to become a benefit corporation.